

1 Scott E. Gizer, Esq., Nevada Bar No. 12216
sgizer@earlysullivan.com
2 Sophia S. Lau, Esq., Nevada Bar No. 13365
slau@earlysullivan.com
3 EARLY SULLIVAN WRIGHT
GIZER & MCRAE LLP
4 8716 Spanish Ridge Avenue, Suite 105
Las Vegas, Nevada 89148
5 Telephone: (702) 331-7593
Facsimile: (702) 331-1652

6 Kevin S. Sinclair, Nevada Bar Number 12277
7 ks Sinclair@sinclairbraun.com
SINCLAIR BRAUN LLP
8 16501 Ventura Boulevard, Suite 400
Encino, California 91436
9 Telephone: (213) 429-6100
Facsimile: (213) 429-6101

10 Attorneys for Defendant
11 FIDELITY NATIONAL TITLE INSURANCE COMPANY

12 DESIGNATED LOCAL COUNSEL FOR SERVICE OF
13 PROCESS ON SINCLAIR BRAUN LLP PER L.R. IA 11-1(b)

14 Gary L. Compton, State Bar No. 1652
2950 E. Flamingo Road, Suite L
LAS VEGAS, NEVADA 89121

15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 WELL'S FARGO BANK, N.A., AS
18 TRUSTEE, FOR PARK PLACE
19 SECURITIES, INC. ASSET-BACKED
20 PASS-THROUGH CERTIFICATES,
SERIES 2005-WHQ2,

Case No.: 2:21-cv-00996

DEFENDANT FIDELITY NATIONAL
TITLE INSURANCE COMPANY'S
PETITION OF REMOVAL

21 Plaintiff,

22 vs.

23 FIDELITY NATIONAL TITLE GROUP,
INC.; FIDELITY NATIONAL TITLE
24 INSURANCE COMPANY; LAND TITLE
OF NEVADA, INC.; DOE INDIVIDUALS I
through X; and ROE CORPORATIONS XI
25 through XX, inclusive,

26 Defendants.

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
 2 **DISTRICT OF NEVADA:**

3 **PLEASE TAKE NOTICE** that defendant Fidelity National Title Insurance Company
 4 (“FNTIC”) hereby files the instant petition of removal removing the instant action to the United
 5 States District Court for the District of Nevada (the “District Court”), from Nevada’s Eighth
 6 District Court in and for Clark County (the “State Court”), pursuant to 28 U.S.C. §§ 1332,
 7 1441(b) and 1446.

8 1. Plaintiff Wells Fargo Bank, N.A., as Trustee for Park Place Securities, Inc. Asset-
 9 Backed Pass-Through Certificates, Series 2005-WHQ2 (“Wells Fargo”) first filed this action on
 10 May 24, 2021 in the State Court. Wells Fargo originally named as defendants Fidelity National
 11 Title Group (“FNTG”), FNTIC, and Land Title of Nevada, Inc. (“Land Title”). A true and correct
 12 copy of the Complaint is attached hereto as **EXHIBIT ONE**.

13 2. This Court has jurisdiction over the instant action pursuant to 28 U.S.C. § 1332(a)
 14 because: (i) this action is a civil action pending within the jurisdiction and territory of the United
 15 States District Court for the District of Nevada; (ii) the action is between citizens of different
 16 states; (iii) the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs;
 17 and (iv) all procedural requirements for removal are met.

18 3. ***There is Complete Diversity of Citizenship Between the Parties.*** FNTG is a
 19 Delaware corporation with its principal place of business in Florida.¹ Thus, it is a citizen of
 20 Delaware and Florida. FNTIC is a Florida corporation with its principal place of business in
 21 Jacksonville, Florida. It is therefore a citizen of Florida.² Land Title was a Nevada corporation
 22 with its principle place of business in Nevada. It was therefore a citizen of Nevada. Wells Fargo
 23 alleges that it is a national banking association chartered under the laws of the United States with
 24 its main office in the State of California. Ex. 1 [Complaint]. ¶ 1. It is therefore a citizen of

25
 26 ¹ Wells Fargo erroneously alleges that FNTG is a Florida corporation. Even if this were so,
 27 FNTG would be (and is) a citizen of Florida.

28 ² Wells Fargo erroneously alleges that FNTIC is a Nebraska corporation with its principal
 place of business in Florida. Even if this were so, FNTIC would be a citizen of Nebraska and
 Florida and diverse from each plaintiff.

California for diversity purposes. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 319 (2006) (national bank association is citizen of state where its main office is located). Thus, there is complete diversity of citizenship between and among the parties.

4. ***No Defendant Has Been Served.*** Neither FNTIC, FNTG, nor Land Title has been served with the complaint and summons. As such, FNTIC need not obtain the consent of the co-defendants to removal. However, to the extent that such consent is needed, FNTIC is informed and believes that FNTG, which is a corporate affiliate FNTIC, does consent.

5. Land Title was fraudulently joined to this action in a misguided attempt to defeat removability. Not only did Land Title not underwrite the Policy nor undertake any obligation or make any representation to Wells Fargo, but ***Land Title dissolved over a decade ago***, on September 24, 2010. Nevada has a statute of repose for claims against a dissolved entity; any claims not brought within three years of the dissolution are barred. NRS 78.585. ***All of Wells Fargo's causes of action against Land Title are therefore inarguably time-barred.***

6. Even if they were not time-barred, it would be plain that Land Title is a sham defendant, as all of Wells Fargo’s causes of action arise out of a policy of title insurance underwritten by United Capital Title Insurance Company (“United Capital,” FNTIC’s predecessor in interest), not Land Title. *See* Ex. 1 [Complaint] p. 30 [Policy]:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE
EXCEPTIONS FROM COVERAGE CONTAINED IN
SCHEDULE B AND THE CONDITIONS AND STIPULATIONS,
UNITED CAPITAL TITLE INSURANCE COMPANY...herein
called the Company, insures, as of Date of Policy shown in Schedule
A, against loss or damage...sustained or incurred by the insured by
reason of [eight enumerated risks].

The Policy provides that it was underwritten solely by United Capital. *Id.* Land Title did not underwrite the Policy, nor did it handle the title insurance claim on which Wells Fargo is suing. Wells Fargo knew this, as it tendered its claim to United Capital and not Land Title. *See Ex. 1 [Complaint], ¶ 88, pp. 631-632.* Wells Fargo has named Land Title even though it knows that, as

1 a matter of law, Land Title could not have any liability on the Policy.

2 Wells Fargo's other allegations against Land Title are similarly spurious (and again
 3 included only to try to defeat removability). Wells Fargo alleges that it relied to its determinant
 4 upon Defendant's representations that Form 100 would provide coverage and made other
 5 representations. *See Ex. 1 [Complaint], ¶ 155.* Elsewhere in its complaint, Wells Fargo concedes
 6 that no such representations were made to it (i.e., Wells Fargo). To the extent that Wells Fargo
 7 contends that such statements were made to Wells Fargo's alleged predecessor in ownership of
 8 the \$280,000 loan (the "Loan") referenced in Wells Fargo's complaint, such statements would not
 9 be actionable by Wells Fargo, as the statute of limitations has long since expired and, in any
 10 event, such claims are non-assignable. Wells Fargo could not have standing to sue Land Title on
 11 such theories (assuming Wells Fargo had an otherwise meritorious claim against Land Title,
 12 which it does not). Finally, as further indication that Land Title was fraudulently joined, the
 13 statutes of limitations on Wells Fargo's deceptive trade practices claims (NRS 41.600, NRS
 14 598.0915, and NRS 686A.310) have long since expired.

15 **7. The Amount in Controversy Exceeds \$75,000.** The complaint in this action seeks
 16 both monetary and nonmonetary relief. Wells Fargo contends that it was the beneficiary of a deed
 17 of trust (the "Deed of Trust") recorded against that certain real property commonly known as
 18 1628 Cordoba Lane, Las Vegas, Nevada 89109 (the "Property") to secure repayment of the Loan.
 19 Ex. 1 (Complaint) ¶¶ 54, 63-65. In its suit against the new owners of the Property (Clark County
 20 Case No. A-14-706221-C, the "Underlying Action"), Wells Fargo contended that the amount
 21 owing on the loan as of April 29, 2015 exceeded \$275,000, and has ostensibly only increased
 22 since that time. *See Ex. 1 [Complaint] p. 616, ¶ 47 (Ex. 16, Underlying Action Cross-Complaint).*
 23 It is FNTIC's understanding that by this action, Wells Fargo is seeking to recover (i) all losses or
 24 damages, up to the \$280,000 Amount of Insurance, sustained by Wells Fargo as a result of the
 25 HOA's foreclosure sale; (ii) the balance due on the Loan, the lien of which upon the Property was
 26 impaired by the Underlying Action; (iii) its attorney fees in the Underlying Action; (iv) its
 27 attorney fees in this action; and (v) punitive damages. Thus, the amount in controversy in this
 28 action substantially exceeds the \$75,000 jurisdictional minimum of this District Court.

8. ***FNTIC Timely Filed This Notice of Removal.*** This action was filed on May 24, 2021. Thus, there can be no dispute that Defendants timely filed the instant notice of removal (i.e., within the 30-day period prescribed by 28 U.S.C. § 1446(b)(1), and less than one year after the action was initiated, as required by 28 U.S.C. § 1446(c)(1)).

9. ***Notice to the State Court and All Adverse Parties.*** FNTIC will give notice of this removal to all adverse parties in the action and to the State Court promptly after the filing of the instant Notice of Removal, in compliance with the requirements of 28 U.S.C. § 1446(d).

10. *All Pleadings from the State Court Action Have Been Attached.* The only pleadings from the State Court Action are attached hereto as **EXHIBIT ONE** and **EXHIBIT TWO.**

11. ***This Notice Complies with Fed. R. Civ. P. 11.*** This Notice of Removal is hereby signed pursuant to Fed. R. Civ. P. 11(a).

12. Accordingly, as FNTIC has complied with all applicable terms of 28 U.S.C. § 1446, it hereby removes this action in intervention from the State Court to the District Court, and it hereby requests that further proceedings be conducted in the District Court as provided by law.

Respectfully submitted,

Dated: May 24, 2021

EARLY SULLIVAN WRIGHT
GIZER & McRAE LLP

Dated: May 24, 2021

5